

APPEAL NO. 021307
FILED JUNE 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable heart attack on _____. The Appeals Panel did not receive a request for review from the claimant by May 7, 2002, the due date for an appeal by the claimant. The file does contain a faxed copy of an appeal from the claimant with a cover sheet which is dated May 23, 2002, and which was received on May 23, 2002, by the Texas Workers' Compensation Commission's (Commission) Chief Clerk of Proceedings. Included with the appeal is a copy of an envelope postmarked April 26, 2002, bearing an incorrect address for the Commission, indicating an attempt to mail something to the Commission's Hearings Division on April 26, 2002. Also included with the appeal is a fax cover sheet purporting to fax an appeal to a number which is no longer a good fax number for the Commission's Hearings Division. The appeal states the claimant's disagreement with the hearing officer's determinations. The respondent (carrier) filed a response to the claimant's appeal, urging affirmance. We note that the carrier states that it received the claimant's appeal on May 3, 2002, indicating that the claimant did timely prepare and mail a copy of an appeal to the carrier.

DECISION

The decision and order of the hearing officer have become final pursuant to Section 410.169.

Commission records show that the decision was mailed to the parties on April 11, 2002. In accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant is deemed to have received the decision on April 16, 2002. Pursuant to Section 410.202 and Rule 143.3(c), an appeal is presumed to be timely if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994. Section 410.202(d) was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code from the computation of time in which to file an appeal. Under the amended provision, 15 days from the claimant's deemed receipt of the hearing officer's decision would have been May 7, 2002, and 20 days would have been May 14, 2002. The claimant's appeal was not received by the Commission until May 23, 2002. The claimant's appeal was not timely filed.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

The true corporate name of the insurance carrier is **EMPLOYERS GENERAL INSURANCE GROUP, INC.**, and the name and address of its registered agent for service of process is

**ROBERT RAMSOWER
1601 ELM STREET, SUITE 1600
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge